

Your Cell Phone – Riley V. California & The Post-Digital Privacy Era

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On June 25, 2014, a unanimous Supreme Court decided the case of *Riley v. California*, and in doing so, thrust the legal world into the post-digital privacy era. The Court held that the police may not search for and seize the digital contents of an individual's cell phone or personal electronic device, incident to an arrest, without first obtaining a search warrant authorizing them to do so. The Court did, notably, carve out a possible exception to the warrant requirement when an "emergency" or "exigent circumstances" exist. Situations where evidence is about to be destroyed or a bomb about to be set off, may present a sufficiently heightened set of circumstances allowing the warrant requirement to be waived. This holding provides law enforcement officials across the country with guidance on how to address information stored in cell phones and PDAs going forward. Previously, state and federal courts have been split on the issue of whether police had to secure a warrant in advance of searching for information contained on a suspect's cell phone at the time of arrest. Chief Justice Roberts, writing for the Court, noted that, "We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime." The Chief Justice further noted, "Cell phones have become important tools... among members of criminal enterprises and can provide valuable incriminating information about dangerous criminals. Privacy comes at a cost." Prior to the decision in *Riley*, courts had traditionally allowed warrantless searches in connection with the arrest of suspects. These warrantless searches were justified as a means of protecting police and preventing the destruction of evidence. Recognizing that the digital-age presents new privacy issues, Chief Justice Roberts said, in effect, that the old rules cannot be applied to modern cell phones which store abundant data about an individual's life and their communications with others. In its Supreme Court briefs, the Justice Department argued that cell phones were not significantly different from wallets, purses, and other items which the Court has long allowed police to search incident to arrest. The Court, through Chief Justice Roberts, disagreed with this reasoning, stating, "That is like saying a ride on horseback is materially indistinguishable from a flight to the moon." Indeed, defense counsel and privacy enthusiasts have long claimed the portable and easily storable technology used in cell phones and PDAs make them different from wallets and purses because of the wealth and depth of information they contain. The Court, unanimously, agreed with this argument, noting, "Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse." The Court's ruling leaves open the question of how it may apply to searches related to potential issues of digital privacy in other contexts, namely personal computers, cloud computing and

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GPS tracking. The ruling also leaves open the question of how it will impact the cases of individuals currently imprisoned based upon evidence seized from digital devices by police at the time of their arrest without a warrant. Riley involved two cases brought to the Supreme Court to address privacy issues regarding the warrantless search of cell phones upon arrest. The issue before the Court arose from a split among various courts throughout the country over the question of whether a cell phone search incident to arrest could be made without a warrant. The 4th, 5th and 7th Circuits had previously ruled that officers could search cell phones incident to arrest without a warrant. This rationale had been followed by high courts in California, Georgia and Massachusetts. The 1st Circuit and the Supreme Courts of Florida and Ohio disagreed with this rationale. In *Riley v. California*, David Riley was arrested in 2009 for having an expired vehicle registration and driving on a suspended license. When his vehicle was impounded and searched, authorities located loaded weapons under the hood. San Diego police then inspected Riley's cell phone. Information obtained from searching the phone's contents led authorities to believe Riley was connected to organized criminals. Indeed, a photograph of another vehicle owned by Riley was linked to an earlier shooting. Mr. Riley was convicted in State Court and received a 15 year sentence. In the case heard with *Riley*, Brima Wurie was arrested in 2007 for selling crack cocaine. Upon his arrest, Boston police located a flip phone in his pocket. Using the cell phone call logs, they were able to locate Wurie's actual home address, after he had provided them with a false one. They then obtained a search warrant and found additional drugs, a weapon and ammunition in the home. Wurie was charged in federal court, convicted and received a 22 year sentence. In neither instance did police obtain a warrant before searching the phones. Riley's conviction was upheld on appeal and Wurie's was overturned. Both cases were brought together before the Supreme Court due to the similarity of issues they presented.